

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

To: The Commission

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NYNEX COMMENTS

NYNEX Corporation, on behalf of its subsidiaries (collectively "NYNEX"), hereby submits its Comments in response to the Fourth NPRM/Third NOI in this proceeding.¹ In the referenced order, the Commission continues its development of rules and policies for the introduction of digital broadcast television. Specifically, the Commission has reviewed and reaffirmed many of its earlier decisions, and has asked for comment in new areas requiring industry input. Further, the Commission has indicated that its actions will be guided by its four stated goals in this proceeding:

- (1) preserving a free, universal broadcasting service;
- (2) fostering an expeditious and orderly transition to digital technology that will allow the public to receive the benefits of digital television while taking account of consumer investment in NTSC television sets;

¹ Fourth Further Notice of Proposed Rulemaking And Third Notice of Inquiry ("Fourth NPRM/Third NOI"), MM Docket No. 87-268, released August 9, 1995.

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- (3) managing the spectrum to permit the recovery of contiguous blocks of spectrum, so as to promote spectrum efficiency and to allow the public the full benefit of its spectrum; and,
- (4) ensuring that the spectrum -- both ATV channels and recovered channels -- will be used in a manner that best serves the public interest.²

It is anticipated that numerous commenters representing a diversity of industry roles and perspectives will respond to the Commission's inquiries. With this in mind, NYNEX limits its initial comments to the Commission's inquiries concerning prospective spectrum use for the delivery of video and other services.

NYNEX has an active interest in the use of spectrum for the presentation of wireless video services. With the Bell Atlantic Corporation, NYNEX has announced a minority investment in CAI's wireless transmission systems to provide video programming services. Further, NYNEX has actively participated in numerous spectrum use dockets. For example, NYNEX has supported the Commission's determination to make MDS spectrum available for auction next month, adding certain refinements which will strengthen the value of the BTA Authorization at issue.³ NYNEX has also supported the ninety-nine industry participants that petitioned the Commission for rapid authorization to employ digital technology in MMDS systems.⁴ Further, NYNEX has supported the Commission's determination to make LMDS spectrum available to wireless

² Id. at 4.

³ NYNEX Comments Re Petitions For Reconsideration as well as Joint Reply of Bell Atlantic and NYNEX Corporation, Report and Order, MM Docket No. 94-131, released June 30, 1995.

⁴ NYNEX Comments, Request For Declaratory Ruling in the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, DA 95-1854, filed July 13, 1995.

cable service, and urged the Commission to adopt technical and auction rules which will promote the use of developing digital technology⁵. In each instance, NYNEX has urged the Commission to promote spectrally-efficient digital use of available spectrum and to establish flexible use rules so that the marketplace can determine the services that best meet the public interest.

In this proceeding, the Commission's very focus is to promote the prompt development and delivery of digital broadcast services. We strongly support the Commission's efforts. Further, it has long been the Commission's plan to allocate this spectrum to existing broadcasters so that they may deliver free, over-the-air High Definition Television ("HDTV"). NYNEX supports the use of this spectrum for the advancement of HDTV.⁶

We are concerned, however, that the efforts of the "Grand Alliance" reported in the Fourth NPRM/Third NOI may signal a shift in focus away from HDTV towards the delivery of multi-channel digital Standard Definition Television ("SDTV") and other uses. In fact, the Commission specifically questions the extent to which it should direct the use of these additional channels for HDTV, or even for "universal, free, over-the-air

⁵ NYNEX Comments and NYNEX Reply Comments, Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket No. 92-297, released July 28, 1995.

⁶ NYNEX observes that there is still some legislative debate concerning the dedication of this spectrum free to existing broadcasters. Our comments addressing rules for spectrum usage are based on the assumption that this course of proceeding continues to represent national law and policy. If an alternative view prevails, we would address that change in reply comments as necessary. The potential for the incorporation of subsequent legislative developments by commenters was anticipated by the Commission in its rescheduling of reply comments from December 4, 1995, to January 12, 1996. Order Granting Extension of Time for Filing Comments and Reply Comments, DA 95-2137, MM Docket No. 87-268, released October 11, 1995.

television,” as opposed to other commercial purposes. The Commission poses three questions:

- Should we require broadcasters to provide a minimum amount of HDTV and, if so, what minimum amount should be required?
- To what extent should we allow broadcasters to use their ATV spectrum for uses other than free, over-the-air broadcasting? We recognize that we currently allow broadcasters to use a portion of their analog spectrum for ancillary and supplementary uses that do not interfere with or detract from their primary broadcast function. Should such uses of the ATV spectrum be permitted and, if so, how should they be defined? What portion of the ATV system’s capacity should be allowed to be used for ancillary and supplementary services?
- To what extent should we allow broadcasters to use their ATV spectrum for services that go beyond traditional broadcast television or ancillary and supplementary uses analogous to those allowed under our current regulatory regime? Should broadcasters be permitted to provide nonbroadcast and/or subscription services? If so, how should services be defined and how much of the ATV system’s capacity should be allowed for such uses? If allowed, what regulation, if any, would be appropriate for such services? (footnote omitted).⁷

NYNEX addresses these questions below.

I. THE COMMISSION SHOULD ESTABLISH MINIMUM HDTV REQUIREMENTS

We begin with the Commission’s inquiry asking whether a minimal level of HDTV should be broadcast. The inquiry itself is cause for concern. Back in 1990 the Commission set provision of HDTV as the goal in the First Report and Order.⁸ This determination was made only after the Commission had earlier carefully assessed the prevailing “NTSC” transmission standard and concluded that it “suffers from a number of

⁷ Fourth NPRM/Third NOI at p. 10.

⁸ First Report and Order, MM Docket 87-268, 5 FCC Rcd 5627 (1990).

deficiencies that limit its video and audio quality.”⁹ It was on the basis of the spectrum requirements of HDTV that an additional 6 MHz per channel was set aside for broadcaster use.

Now, it appears that further technological advances have made it possible to provide “an array of additional alternative uses,” as well as to provide a digital HDTV signal over the allotted 6 MHz channel. While these advances set the stage for additional public interest gains, NYNEX does not believe that they provide any basis for abandoning the public interest in HDTV broadcasts. Accordingly, the Commission should determine at least a required level of HDTV to be generally provided free over-the-air in this proceeding.¹⁰ Further, the Commission should consider setting a near-term time schedule for the rollout of HDTV to ensure that the dedicated spectrum is promptly utilized. In this regard, it has been reported that “regular HDTV broadcasting” could be made available “by late 1997 or early 1998”.¹¹

Overall, the Commission should continue to focus herein on facilitating the prompt and widespread availability of HDTV and such additional free, over-the-air digital broadcasting in the allocated spectrum as is made possible by technological advances.

⁹ Notice of Inquiry, MM Docket 87-268, 2 FCC Rcd 5125, 5126 (1987). The Commission continued on to describe “interline flicker,” “line crawl,” “vertical aliasing,” “large area flicker,” “static raster,” “temporal aliasing,” “cross-color” and “cross luminance” as among these deficiencies. *Id.* at pp. 5126-5127.

¹⁰ NYNEX is not in a position to pick and propose a specific minimal level of HDTV broadcasting, but it would seem appropriate to include at least the daily “prime-time” viewing hours.

¹¹ *Communications Daily*, dated November 13, 1995, at p. 2.

II. THE COMMISSION SHOULD ONLY AUTHORIZE OTHER USES AS ANCILLARY OR RESIDUAL TO ATV BROADCASTING

The Commission's other two inquiries regarding spectrum utilization concern the potential for using their designated ATV spectrum for uses other than free, over-the-air broadcasting. The Commission divides this inquiry into two parts: (a) "ancillary and supplementary services"; and (b) "nonbroadcast and/or subscription services."¹² NYNEX believes that the various responses to these two inquiries should be candled against the Commission's goals.

Ancillary and Supplementary Services.

The Commission previously dealt with the provision of ancillary and supplemental services using the ATV spectrum in the Third Report and Order. Then, it answered proposals for the authorization of ancillary uses by stating that, whether these ancillary uses were provided during operations on a non-interfering basis or when the ATV channel was non-operational, the Commission "would not want such ancillary uses to predominate over the primary use of the channel."¹³ However, it also noted that there was precedence for limited authorization both in the current rules for NTSC service and as earlier used to spur the development of DBS.

It is impossible to anticipate all of the services that might be proposed for authorization as ancillary or supplemental to free over-the-air ATV broadcasting. As evidenced in this Docket, technological advances will continue to make currently

¹² Fourth NPRM/Third NOI at p. 10.

¹³ Third Report and Order at 6981.

unanticipated new services possible. Nevertheless, because “ancillary” services are by their very nature additional to basic ATV service, they appear to promise a public gain (HDTV) while also serving the Commission’s four goals; most notably, “preserving a free, universal broadcasting service.” NYNEX believes that past decisions provide a basis for their authorization. That is, they should be authorized when provided *within ATV broadcast services on a non-interfering basis or over active operating channels during non-operating periods*. In this way, the Commission can be certain that attention to its fundamental ATV objectives is not diverted.¹⁴

NonBroadcast and Subscription Services

The examination of ancillary and supplemental services makes more evident the public interest challenge in authorizing “nonbroadcast and subscription services.” In fact, the provision of these services over the limited spectrum is antithetical to free, universal broadcasting. Unlike ancillary services which are complementary to the Commission’s free digital television objective, nonbroadcast and subscription services threaten to displace the objective in favor of other pursuits. In addition, because the enabling spectrum itself was provided free and on a dedicated basis, not by competitive bid or

¹⁴ In the later case it is important that these non-operating periods not be extended to benefit “ancillary” uses at the expense of free over-the-air broadcasting. The Commission recognized that “ancillary” uses that are provided in non-operating time might place an insidious pressure on ATV broadcasters to reduce free over-the-air programming. *Id.* Therefore, it placed under consideration the establishment of a minimum operating schedule for ATV similar to that required of NTSC operators. 47 C.F.R. § 73.1740(a)(2). This concern should continue to inform the Commission’s review of proposed “ancillary services” lest they predominate by excluding the free, universal broadcasting service the Commission seeks to promote.

auction process, there is no assurance that the highest public interest uses are being developed.

In specific response to the Commission's inquiry as to whether broadcasters should "be permitted to provide non broadcast and/or subscription services" (emphasis added), NYNEX prefers an affirmative and balanced regulatory approach. Instead of erecting legal barriers to "broadcaster" activities, the Commission should focus its regulation on the positive goals it wants to achieve and permit other services as a residual use of spectrum capacity. This approach seems particularly apt where -- as here -- the spectrum was made available free only to particular users for a specified purpose (digital television). Finally, as to the form of regulation for these other services, the Commission should regulate these services when provided by "broadcasters" in the same way that it regulates like services provided by competitors. This approach is required to ensure vigorous and fair service competition.

CONCLUSION

NYNEX appreciates the opportunity to offer its Comments in this proceeding and urges the Commission's favorable consideration of its views.

Respectfully submitted,

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